

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3956 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

TRUPTI CO-OP. HOUSING SOC.

Versus

STATE OF GUJARAT & OTHERS

Appearance:

MR MD PANDYA for the Petitioner

MR NIGAM SHUKLA for the Respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/08/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner, Trupti Co-operative Housing Society is a registered Co-operative Society under the provisions of Gujarat Co-operative Societies' Act. The Government of Gujarat in order to allot residential plots in the Gandhinagar to its employees and Co-operative Housing Societies and other persons has taken a decision. In pursuance of the said decision, the petitioner who is a registered Co-operative Housing Society applied to

Administrator and Deputy Secretary to allot the land to each of its members. The Society is consisting of members of middle income group, in all fifteen. Vide letter dated 22-1-1974 of the Dy. Secretary (P.W.D.) Gandhinagar, a certificate has been issued that 15 members of the Society be allotted residential plots each of 200 sq. mt. area. On the strength of this certificate, the Petitioner society was registered as Housing Co-operative Society under the aforesaid act on 23-4-1974 by District Registrar Co-operative Societies (Rural) Ahmedabad. Under the resolution dated 25th July, 1974 of the Government in the Department of Public Works in connection with the disposal of land at Gandhinagar a classification about the category of persons (on the basis of their income) area to be allotted to them and rate per square mt. has been laid down. As per the aforesaid resolution, the members of the petitioner society belonging to middle income group are entitled for 200 sq. mt. of land at the rate of Rs.10/- per sq.mt.. The Government of Gujarat, Public Works Department, under the resolution NO.LND/074/1398/(314)/A dated 8-10-1975 decided to allot 15 plots to the petitioner society. The Additional Collector, Gandhinagar under its letter dated 31st December, 1975 informed to the petitioner society that the Government has decided to allot 14 plots of size of 135 sq.mt. situated in Sector 29 of Gandhinagar township and comprising of total area of 1986 sq. mts.. The variation in the earlier order has been made and instead of 15 members, 14 members have been allotted the plots, and area of the plot has also been reduced. A protest has been raised by the petitioner against the said order vide representation dated 15-1-1976. However, 25% of the price of the land allotted amounting to Rs.7150/- has been paid in pursuance of the said order. Thereafter, the petitioner society persistently represented the matter to the Government. Under the letter dated 15-7-1976, the petitioner was intimated that one more plot of 135 sq. mt. has been allotted to it in Sector No.29. So the grievance made by the petitioner partly succeeded and all the fifteen members were allotted the plots. The only grievance which subsisted was the reduction of the area of the plot of the members. The petitioner society under its letter dated 6-7-1977 informed to the Additional Collector, Gandhinagar that out of fifteen members, 3 members are not willing to take the plots of area less than 200 sq. mts. In this letter, it has been further requested to allot only 12 plots and sought further advise about depositing the money. At this stage, the Additional Collector, Gandhinagar issued a show-cause notice dated 6-8-1977 to the petitioner society calling upon as to why allotment

should not be cancelled and the amount deposited of 25% of the price should not be forfeited. The petitioner society gave a detailed reply to the show-cause notice on 12-8-1977. The Additional Collector, Gandhinagar under its order dated 3-9-1977 cancelled the allotment order of plots and also made the order for the amount of Rs.2025/- deposited by the Society to be confiscated and 25% amount of Rs.7150/- paid by the Society to be refunded to it. The petitioner has deposited in all Rs.7150/- and Rs.2025/-.

2. Being aggrieved by the said order of the Additional Collector, the petitioner preferred revision application No.S.S.R.D. L.N.D. A 35/78 before the Special Secretary to the Revenue Department of respondent no.1. The Special Secretary under its order dated 31st January, 1978 allowed the Revision Application and the order of the Additional Collector was set aside. The matter was remanded back to the Additional Collector to consider the same in the light of the directions given in the order.

3. After remand by the letter dated 27-3-1980 the Deputy Secretary and Administrator asked for certain information and particulars from the petitioner society which has been furnished by the petitioner on 1-5-1980. In this letter the petitioner society intimated to the authority that five of its members are ready to give up their membership only if remaining ten members are assured that each of them will be allotted 200 sq. mts. of land. Under the letter dated 11-1-1982, the petitioner society again reminded the said authority to allot the plots as per the order of the Special Secretary and also to pass an order for payment of the price of the land. The Section Officer under its letter dated 6-7-1982 intimated to the petitioner that the society cannot be allotted the plots. This petition has been filed by the petitioner challenging that order of Section Officer before this Court.

4. The petitioner was permitted to amend the writ petition vide order dated 14-2-1983, By this amendment, the petitioner has challenged the order of District Collector, Gandhinagar dated 6-12-1982 /1/83 decided the remanded matter and the allotment of the plots made to the society were ordered to be cancelled. Further Rs.2025/- were ordered to be forfeited and an amount of Rs.7150/- was ordered to be refunded to the society.

5. The respondent contested the writ petition and they filed the reply to the same. The learned counsel

for the petitioner contended that the order of the Section Officer dated 6th July, 1982 is wholly without any authority, as the Section Officer has no such power. The Section Officer has passed this order on his own and it has been made in total ignorance of the earlier order of the Special Secretary passed on 31st January, 1978. In the revision application filed by the petitioner against the order of the Additional Collector to cancel the allotment of the plots, the matter has been remanded back to consider the matter of allotment in the light of the directions given by the revisional authority and that matter has not been decided for long time by the Additional Collector. The Section Officer has no power or authority to make such an order at this stage. The Section Officer is not an officer, superior in the rank to Secretary and he could not have acted as a revisional authority. The effect of this order is of superseding the earlier order of the Special Secretary for which the Section Officer has no competence or legal sanction under the Act or rules. It has next been contended by the learned counsel for the petitioner that the Additional Collector has committed serious illegality in passing of the order dated 6-12-1982. This order has been passed in total ignorance of the order of the revisional authority. The Collector has altogether ignored the fact that he was considering the matter remanded by the revisional authority and as such, the matter has to be decided in the light of the directions given. The order dated 6-12-1982 has been made in gross violation of principles of natural justice and fair play. Shri Pandya further contended that the reasonings given by the respondent no.3 that the previous policy of the allotment has come to an end is absolutely perverse, unjust, unwarranted and not tenable at law. The District Collector was considering the matter remanded to it which relates to the cancellation of the allotment of the plots made earlier and the matter should have been considered with reference to the policy which was there at the time of making of the allotment. Merely because the allotment has been cancelled and the petitioner was litigating the same, their just claim cannot be denied only on the ground of change in the policy. The matter relates to the grant made already and cancelled subsequently illegally. It has next been contended that the Collector has not considered the order of the revisional authority. The remand order has been made on 31st January, 1978 and for long time the Collector has not cared to pass the order. The order of cancellation made is practically same to the order which has been made earlier.

6. On the other hand, Shri Shukla supported the

order made by the Section Officer as well as by the District Collector.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. First of all, I will consider the ground raised by the learned counsel for the petitioner that the order of the Section Officer dated 6-7-1982 is wholly arbitrary and without jurisdiction. In the reply to the writ petition, in para no.13 thereof, the respondent has stated that the order dated 3-9-1977 of the Additional Collector Gandhinagar is not in existence. The Section Officer considered the order of the Special Secretary before passing of the order dated 6-7-1982. In the reply, the respondents have not given any justification how the Section Officer was competent to make such an order. It has also not been explained by the respondent that under which provision the Section Officer has such a power to make the order of the nature aforesaid. The Secretary of the Government made the order in favour of the petitioner setting aside the order of the Additional Collector dated 3-9-1977 under which the allotment has been cancelled. When this order has been set aside by the revisional authority, the Section Officer has no power whatsoever to say that in view of the change in the policy, no allotment can be made to the petitioner society. That matter has been decided by the Special Secretary and it was sub-judice before the Collector, Gandhinagar. It is really shocking that in the State of Gujarat, no action has been taken whatsoever against such an erring Section Officers who wrote something for which he had no authority under any law as well as which was totally contrary to what the Special Secretary has decided in the revision application. Instead of taking any action, on the contrary, the respondents have justified the letter of the Section Officer. The import of the reply is that the Section Officer is above the Special Secretary. It is not the case of the respondents that the Section Officer has only communicated the same and the decision was taken by the Officer in higher rank than the Special Secretary who made the order of the remand in revision application. The communication is understandable of some decision taken by the higher officer, but the order is substantive order and is difficult to understand what to say to accept it. The communication of the Section Officer under the letter dated 6-7-1982 is bad in law, illegal and cannot be allowed to stand. The Government issued a resolution dated 25th July, 1974 under which the policy for allotment of residential plots at Gandhinagar at a concessional price to the State Government servants and to the Co-operative Societies was reviewed. The

Government in partial modification of its previous resolution directed the eligibility for size and concessional price of the land in Gandhinagar in respect of categories of person and Society, as set out in the Table of the said Government resolution. As per item no.6 of the said resolution, the members of low income group, Co-operative Housing Societies were eligible for the size of the plot admeasuring 135 sq. mts. only at a price of Rs.10/- per sq.mt.. One of the other condition in the said resolution dated 25th July, 1974 was that all pending cases of allotment of residential plots in respect of whom the deposits were received, and also in respect of the Co-operative Housing Societies, including those in whose favour the land eligibility certificates were issued, but final allotment was not made would be decided in accordance with the terms and conditions of the said resolution. After the aforesaid resolution, under the letter dated 30th August, 1974 addressed to the President of the petitioner-society, it was informed of the terms and conditions which were applicable to the petitioner society in respect of the allotment of plots to it. The petitioner society by its reply dated 26-9-1974 had agreed to accept and abide by all the terms and conditions of the resolution dated 25-7-1974. Thus, the petitioner society accepted the terms and conditions and also tendered the deposit of Rs.2025/- for allotment of the land in accordance with the said terms and conditions. This fact has not been controverted by the petitioner in the rejoinder affidavit.

8. Now I am referring to the order of the Special Secretary made in the revision application filed by the petitioners against the order of the Additional Collector dated 3-9-1977 cancelling the allotment of the petitioner. The operative part thereof reads as under:

For the reasons stated above, the impugned order of Additional Collector, Gandhinagar is hereby cancelled and this case is remanded to him alongwith the following instructions.

- (1) To examine the reasons as to why 200 sq. mt. plot can not be given to each of the 15 members as per his own certificate of Additional Collector and as per the original demand of the applicant society and the said reasons may be specifically mentioned in his new order.
- (2) Whether less than 15 members of the applicant society can be accommodated in 200 sq.

mt. land per plot after making calculation of 135 sq. mt. land per plot between 15 members? The society may be informed accordingly to decrease the number of members and if it agrees, then reallocation order may be issued.

- (3) The sale price may be decided on the area which may be decided as stated in para two above and on that basis afresh order may be issued according to rules to recover 25% deposit of such price and 75% remaining such price.

The order pronounced today on 31st January, 1979. The order of the Additional Collector dated 3-9-1977 cancelling the allotment of the plots of the petitioner society has been cancelled and the matter has been remanded to the Collector with the instructions to examine the reasons as to why 200 sq. mt. plot can not be given to each of the 15 members as per his own certificate of Additional Collector and as per the original demand of the applicant society and the said reasons may be specifically mentioned in his new order. The further instruction was given that the feasibility of increasing of the area of the plot on reduction of the membership may also be considered and the last instruction was that the sale price may be decided on the area which may be decided as stated in earlier instruction and on that basis the fresh order may be issued according to rules to recover 25% deposit of such price and 75% remaining such price.

9. The order of the revisional authority is very specific and clear. The cancellation of allotment of the plot to the petitioner by the Additional Collector was held to be illegal and that order has been set aside. The matter has been remanded only to see that the members of the petitioner society can be given 200 sq. mt. each or not or to see any feasibility of allotting them the plot of the area of 200 sq. mt. on reduction of the membership. It was not a case where on some technical ground, the order of the Additional Collector has been set aside by the revisional authority and the matter has been remanded back to consider the matter afresh and pass an appropriate order. The matter has been remanded only to see whether the members of the petitioner society can be given plots of the area of 200 sq. mt. or not. Only to decide that feasibility of giving of 200 sq. mt. plot has to be considered and the fresh allotment order has to be issued where the area of the plot has been accepted to be changed. Otherwise if the change is not made in the area of the plot then the original allotment

order remains and the same has to be given effect to and the petitioner has to be given final allotment of the plots. The District Collector has completely misunderstood the order of the revisional authority. Nothing has been left to the District Collector to maintain the order of the cancellation of allotment of the plots to the petitioner. The approach of the District Collector in the present case was absolutely perverse. It was not the case to be decided afresh whether the plots allotted to the petitioner should be maintained or cancelled.

10. So far as the claim of the petitioner for allotment of the land to its member of the area of 200 sq. mt. is concerned, I do not find any illegality in the reasoning given by the District Collector not to accept that prayer. The matter was left for decision to the District Collector on the areas of the plot to be allotted. The reasons which had been given by the district Collector not to allot any land of the area of more than 135 sq. mt. is perfectly legal and justified and it is in consonance with the Government resolution dated 25th July, 1974. The final allotment has not been made to the petitioner and it was a case pending for final allotment. The day on which the Additional Collector passed the order of the cancellation of the allotment on 3-9-1977, no order contrary to the terms and conditions laid down under the resolution dated 25th July, 1974 could have been made by the Collector as well as even by this Court. It is for the Government to decide the size of the plot to be allotted to the members of the Co-operative Society of particular income category and on what rate. It is an allotment on the concessional rate and not by public auction. If this is the case, then the petitioner has no right whatsoever for the allotment of the plot of size of 200 sq. mt. It is true that a certificate has been given to the petitioner of allotment of the plot of size of 200 sq. mt. to each of its member, but that certificate was issued earlier to the resolution dated 25th July, 1974. The resolution dated 25th July, 1974 has taken care of the matter which has not been finalised. The condition therein, as referred above, makes it abundantly clear that, that limit of the size will be applicable to those cases where eligibility certificate has been issued, but final allotment has been made. The petitioner has no right much less an accrued right for the allotment of the plot of size of 200 sq. mt. After the resolution dated 25th July, 1974, the order of the allotment has been made on 19/31-12-1975 of the plot of area of 135 sq. mt. which is perfectly in consonance with the provisions as

contained in the resolution as aforesaid.

11. The order of the District Collector dated 6/12/82 /1/83 which is contrary to the order of the revisional authority and totally against what the revisional authority decided, cannot be allowed to stand. The order of the Additional Collector made earlier on 3-9-1977 has already been set aside by the revisional authority, and as such, the order of the allotment of the plots made to the petitioner on 19/31/12/1975 and 15-7-1976 stand restored. The petitioner has given out in the writ petition that the three members were not willing to take the plots of less than 200 sq. mts. of the area, which has specifically been informed by the petitioner to the Additional Collector, Gandhinagar under the letter dated 6-7-1977. In this letter, it has further been requested to allot only 12 plots. In view of this admission of the petitioner society, though the allotment has been made for 15 members, but 3 members have declined to accept the allotment of the area less than 200 sq. mts., though entitlement as per the resolution dated 25th July, 1974 is only of 135 sq. mts., and as such, it is hereby ordered that only 12 members are entitled for the allotment of the plots of the area of 135 sq. mt. at the rate of Rs.10/- per sq. mt. The three remaining plots should be reverted back to the Government and the Government shall be free to dispose of those plots by public auction or by any other mode permissible under the rules. Before parting with this matter, I consider it appropriate to make clarification so that something does not remain in dispute. The petitioner's counsel has come up with the case that the plot of the area of 135 sq. mt. has been allotted. That has also been mentioned in the writ petition, but from the allotment letter, annexure 'D' at page no.21, I find from the schedule enclosed that the plot no.702/1 and 721/1 are of the size of 138 sq. mt. and rest of the 12 plots are of the size of 142.50 sq. mts. The clarification is made that the plot should be of the area as allotted under the allotment letter aforesaid. The 15th plot has been allotted of the size of 135 sq. mts. which has been given no.706/1. Out of these 15 plots, three plots are to be surrendered by the petitioner to the Government forthwith. Rule is made absolute in the aforesaid terms.

12. The District Collector has passed absolutely perverse order and the order totally contrary to what the revisional authority has decided. Similarly, the section Officer has passed the order for which he has no legal authority. Both these order are per se illegal and as such, it a case where exemplary costs is to be awarded.

The respondent no.1 is directed to pay Rs.5000/- by way of costs of this litigation. However, it shall be open to the respondent no.1. to recover this amount from the erring Officer. Out of this amount, Rs.1500/- shall be deposited by the respondent no.1. in the office of Gujarat State Legal Aid and Advisory Board, High Court Building, Navrangpura, Ahmedabad and Rs.1500/- in the Advocates' Welfare Fund with the Bar Council of Gujarat and rest of the amount should be paid to the petitioner.